IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

CIVIL REVISION APPLICATION NO.267 OF 2007

Tukaram Narayan Bamnolkar
since deceased through legal
representatives :-
Smt.Taramati Tukaram Bamnolkar
and others. : Petitioners.

versus

Kupurchand Jawanmal Oswal
since deceased through legal
representatives :-
Sou.Sajanabai Motilalji Kataria
and others. : Respondents.

Ms.Gauri Godse for the Petitioners.
Mr.P.S.Dani for the Respondents.

CORAM : S.A.BOBDE, J.

DATED : OCTOBER 05, 2007.

ORAL ORDER :

1. Rule, returnable forthwith. Taken up for

final hearing by consent of the parties.

2. This Revision Application is against the decree of the appellate court directing eviction of the petitioners on the ground of bonafide need of the respondent-landlords. The premises comprise of two rooms one being used by the petitioners for residence and other being used for shop. The members of the family of the petitioner are two in number. The respondent/landlord is in possession of two similar rooms; one being used for residence and other being used for the purpose of shop. The finding is that the Respondent’s family has nine members including one son Kishor who is staying in Mumbai for the purpose of employment. The learned counsel appearing for the petitioners submitted that the lower appellate court could have seen that the respondent’s need is not genuine. According to the learned counsel for the petitioners, in the suit the respondent pleaded that the premises were inter alia necessary for the purpose of setting up a business by Kishor. In fact it has been found that Kishor is employed in Mumbai and, therefore, the respondent’s case ought to have been

dismissed as false.

3. It may be true that the need was pleaded by the respondent for the purpose of business of his son Kishor. It is, however, not possible to infer from the facts that Kishor is staying in Mumbai; that he would not start his own business in the suit premises. The lower appellate Court has dealt with this aspect of the matter and has come to the conclusion that the respondent's need is bonafide and genuine on the basis of totality of the case pleaded by the Respondent. The lower appellate Court has observed in paragraphs 20, 21 and 22 thus:-

> " 20. The learned Trial Court has discarded Plaintiff's evidence holding that the evidence adduced is contrary to the pleading, as the pleadings are not clear and specific that the premises are required by the land-lord for the purposes of the use by Kishor for starting a new business. It is true that in the suit, the Plaintiff has alleged that the premises are required by him for the expansion of the business, whereas in

the evidence he has deposed that the premises are required by him for his son Kishor to start a cloth business. In my view, one thing is definite and certain that Kishor, the Plaintiff's son is still a member of the Plaintiff's family and is working in the cloth market at Mumbai. One another aspect apparent from the pleadings as well as the evidence is that the need for possession of the premises expressed by the Plaintiff, is for the purposes of the business. It may be the expansion of the business or for starting a new business, may be by himself or by any member of his family. Need of a member of the Landlord's family obviously is the need of the Landlord himself and, therefore, merely because in the suit the Plaintiff has not stated that the premises are required for the use by his son Kishor, in my view, hardly assumes any importance. The question is whether the requirement is reasonable bonafide and genuine, is only to be found out.

21. In this case, admittedly, the

Plaintiff has in his possession only two rooms, the front room being used for the purposes of a medical store, whereas the room at the back side is used for residential purpose. Similar is the case with the Defendant, having two rooms in his possession, the front one being used for the purposes of a laundry and rear one is used for residence. When accommodation wise both the parties are placed on the same footings, the other factors will have to be looked at. The first and the foremost is that the Plaintiff is the Owner/Landlord whereas the Defendant is in possession of the suit premises as the Plaintiff's tenant. The Plaintiff Landlord, thus, has a right to use his own premises and for his own purpose. One another aspect supporting the Plaintiff's claim is that he has 8 to 9 members in his family. If one of the sons wants to start the business, then there is nothing wrong about it if he does so in his own premises. Even otherwise, the evidence shows that Kishor for whose use the premises are required

is working in the cloth market in Mumbai and his wife is living in Alibag.

22. The learned Trial Court on the basis of evidence, made an observation that no evidence has been tendered by the Plaintiff to show that Kishor, at any point of time, has made any endeavour for commencing the business and the details of the business are not given. In the case of Mohanlal v/s Surupchand (referred to above), has been laid down that "if the particulars of the proposed business are not brought before the Court, then in the absence of such particulars, it cannot be said that the Landlord's desire is genuine. "But in the case of Raghunath Panhale (referred to above) it has been laid down that "it is not necessary for the Landlord to state in his pleadings the nature of business, he proposes to start". Similarly, in the case of Dattatraya Laxman Kamble v/s Abdul Rasul (referred to above) it has been laid down by the Hon'ble Supreme Court that "for starting business

possessory know-how necessary for doing the business is not a requirement". Again in the case of Mahadeo Shriniwas Naik v/s Ratanchand Anandram (2004(2) Mh. L.J. 190), it has been observed that "it is not necessary for the Landlord to establish that his son had financial capacity to expand his business". Considering thus the facts appearing in the evidence that the Plaintiff's family is quite large as compared to that of the Defendant, the Plaintiff has only one room used for residence and the other one in his possession is being used for the medical store. One room accommodation for 8 to 9 members in a family obviously is quite insufficient. The two sons of the Plaintiff are of marriageable age, one son is already married, grown up grand-children of the Plaintiff are also living with him."

4. The order does not suffer from any error of law apparent on the face of the record. The appraisal of the bonafide need of the respondent is reasonable and does not call for any

interference. The petition is dismissed. Rule is discharged.

5. At this stage, the learned counsel appearing for the petitioners prays for stay of execution for a period of four weeks from today. The stay granted by this Court on 18th June 2007 shall be extended on the conditions that the petitioners should not part with possession and/or should not induct any other person in the suit premises.

[S.A.BOBDE,J]